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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/694,335	10/27/2003	Stephen H. Cate	P03958US2-137B	3859

34082 7590 04/28/2005

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EXAMINER

PARSLEY, DAVID J

ART UNIT PAPER NUMBER

3643

DATE MAILED: 04/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/694,335	<b>Applicant(s)</b> CATE ET AL.	
	<b>Examiner</b> David J Parsley	<b>Art Unit</b> 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 May 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 7-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____  |

*RD*

## **Detailed Action**

### ***Amendment***

1. This office action is in response to applicant's amendment dated 5-25-04 and this action is final.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 8-9 are rejected under 35 U.S.C. 101 because the disclosed invention is inoperative and therefore lacks utility. Claim 8 states that a PLC is provided to sense the casing hopper and a PLC is a device that cannot be used as a sensor but instead is a device which controls a sensor and therefore the claimed invention is inoperative.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 7 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No.

4,539,796 to Nakamura.

Referring to claim 7, Nakamura discloses a method for filling a natural hollow elongated casing with a meat emulsion comprising, providing a casing filling station – proximate 3 and 8, including a stuffing tube – at 3, for supporting the casing to be filled with the meat emulsion, providing a casing hopper – at 1, adjacent the casing filling station – see figures 6-8, to serve as a reservoir for a plurality of shirred artificial casings for delivery of shirred artificial casings for mounting on the stuffing tube – at 3, and moving the casing hopper away from its position adjacent the casing filling station when natural casings are placed on the stuffing tube in the casing filling station – see for example figures 6-8 and columns 10-11 describing operation mode 4, where figures 6-8 show that it is inherent that the portion of the casing hopper which allows individual feeding of the casings to the stuffing position is movable to and away from the stuffing tube and further the retraction of the stuffing tube – 3 away from the hopper – 1 after stuffing is completed allows for the hopper to be moved away from the stuffing tube and further as seen in columns 10-11 both natural and artificial casings are shown to be capable of being used in the same operation mode and therefore the hopper can contain artificial casings while a natural casing is on the stuffing tube.

***Claim Rejections - 35 USC § 103***

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4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakamura et al. as applied to claim 7 above, and further in view of U.S. Patent No. 5,372,537 to Stiles or U.S. Patent No. 6,066,035 to Hergott.

Referring to claims 8-9, Nakamura further discloses a controller – at 31-32, is provided and senses when the casing hopper is in its position adjacent the casing filling station to thereupon control the longitudinal movement of the stuffing tube – 3, to maintain the stuffing tube in a non-automatic extension mode, to hold a follower – at proximate 3a as seen in figure 9 or 4, connected to the stuffing tube in a retracted position, and to maintain the casing hopper in its position adjacent the casing filling station – see for example figures 6-8 and columns 6-9, where it states that the entire process can be automatic and it is inherent that the controller senses the location of the hopper – at 1, in automatic operation. Nakamura further discloses a natural casing is placed on the stuffing tube – 3, with the stuffing tube being in a partially retracted position to locate a discharge end of the stuffing tube upstream of the casing filling station, actuating the controls – at 31-32 and/or 35-36, to cause the stuffing tube to extend through a chuck – at 10, and to cause a meat pump – t 5, to start pumping meat through the stuffing tube when the position of the stuffing tube through the chuck is sensed, and to start rotation of the chuck and the stuffing tube, and to start the operation of linking chains and a conveyor – at 14, located downstream of the casing filling station, manually advancing the follower – proximate 3a

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using manual controls – at 36, and sensing its arrival at a position adjacent a twister mechanism – at 12-13, containing the chuck – at 10, and causing the controls to stop the operation of the casing filling station – see for example figures 6-8 and columns 6-9. Nakamura does not disclose the controller is a PLC. Stiles and Hergott do disclose the controller is a PLC – see for example column 7 lines 47-64 of Stiles and figures 2-3 of Hergott. Therefore it would have been obvious to one of ordinary skill in the art to take the method of Nakamura and add the controller being a PLC of Stiles or Hergott, so as to allow for the controller to have a memory to store data on different types of sausage casings and to allow for the controls to be easier to use by the controller.

### *Response to Arguments*

5. Applicant argues that the Nakamura et al. reference US 4539796 does not disclose moving the casing hopper away from its position adjacent the casing filling station when natural casings are placed on a stuffing tube in the casing filling station. As seen in figures 6-8 and columns 10-11 of Nakamura et al. the casing hopper – at 1, is capable of being used with different types of casings and therefore is movable to accommodate different types and sizes of casings. Further, the distance between the clamps – at 2 of the hopper and the hopper – at 1 are movable to and away from the casing filling station to accommodate the different types of casings.

***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J Parsley whose telephone number is (571) 272-6890. The examiner can normally be reached on 9hr compressed.

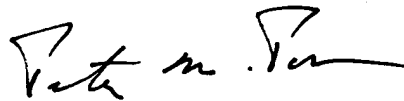
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David Parsley  
Patent Examiner  
Art Unit 3643



PETER M. POON  
SUPERVISORY PATENT EXAMINER

4/22/05